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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 17th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 11 August 2000, at 3 p.m.

Chairperson: Ms. MOTOC

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(b) XENOPHOBIA;

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The meeting was called to order at 3.05 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/2000/L.9)

Draft resolution on human rights and humanitarian consequences of sanctions, including embargoes (E/CN.4/Sub.2/2000/L.9)

1. Mrs. DAES said that she was introducing the draft resolution on behalf of a large number of sponsors. It was based solely on humanitarian considerations and avoided mentioning any country that was actually a target of sanctions in order to avoid politicization. The Sub-Commission was simply expressing humanitarian concern regarding the plight of civilian populations, especially vulnerable groups.

2. She announced two revisions to the text. The words "on populations" should be inserted after "embargoes" in the last preambular paragraph and the word "minimize" should be replaced by "eliminate" in paragraph 1 (b).

3. Mrs. WARZAZI said that, while she appreciated the humanitarian considerations that had motivated the sponsors of the draft resolution, she had not joined them because she thought that the sentiments it contained should be more forcefully conveyed. For example, the statement in the fourth preambular paragraph that "the international community must do everything possible to protect at least the core content of the economic, social and cultural rights" was so weak as to be virtually meaningless. The meaning of "the core content" was very obscure. The Sub-Commission and other bodies had stressed time and time again that no rights were less important or more important than others. Although the wording was that of the Committee on Economic, Social and Cultural Rights, she thought it should be amended.

4. In paragraph 1, the Sub-Commission appealed to the Commission on Human Rights to "consider recommending" certain behaviour. It would be more courageous to say "recommend" without further qualification. Again, the Security Council was to be asked, in paragraph 1 (b), to "consider restructuring sanctions regimes". Restructuring was not the appropriate remedy for the undesirable effects of sanctions. She was shocked by the reference in the same subparagraph to ensuring "adequate" access to food when such access should clearly be unrestricted.

5. The attempt to avoid politicization was frustrated in paragraph 3 by the reference to "international peace and security obligations". Moreover, Governments that were starved of funds and were often denied permission to import basic commodities were being urged to alleviate the humanitarian crisis in their countries.

6. Unless those serious shortcomings were remedied, she would be unable to support the draft resolution.

7. Mr. ALFONSO MARTÍNEZ said he had not sponsored the resolution because it failed to bring out a number of essential points. It should start by stating that tens of millions of people were being subjected to sanctions imposed unilaterally by a single State. The United States of America had imposed various types of sanctions on about 30 States, which were no longer described as "rogue States" but as "States of concern" because they refused to fall into line with the policies of a monopolistic Power. The illegal nature of such sanctions had not been mentioned.

8. He welcomed the replacement of the word "minimize" by "eliminate" in paragraph 1 (b). He viewed paragraph 3 as superfluous, since all States were required as a matter of course to respect human rights and their obligations under international humanitarian law.

9. All in all, however, he commended Mrs. Daes and the other sponsors for drawing attention to the fact that the use of economic sanctions to impose human rights was contrary to the spirit and letter of the Charter of the United Nations. He hoped that the draft resolution would be amended in such a way that he could support it without reservations.

10. Mr. KARTASHKIN suggested inserting the words "and other vital products" after the words "pharmaceutical supplies" in paragraph 1 (b) and paragraph 2.

11. Mr. PARK said that he deeply appreciated the initiative taken by Mrs. Daes and the other sponsors of the draft resolution and would not stand in the way of its adoption. However, he agreed with Mrs. Warzazi that the introductory phrase in paragraph 1 was too weak. The words "consider recommending" should be replaced by "request" or "recommend".

12. He proposed deleting the reference to the Security Council in paragraph 1 (a). Under the Charter of the United Nations, the Security Council was primarily responsible for maintaining international peace and security and could decide to impose sanctions under Article 43. As the Council could not be expected to disregard the possible humanitarian impact of such measures, it would be presumptuous to enjoin it to observe the provisions of human rights and international humanitarian law. He proposed rewording paragraph 1 (b) so that it stressed the need for the Security Council to give due consideration in imposing sanctions to the humanitarian impact on the civilian population. He also agreed with Mrs. Warzazi's proposal to replace the word "adequate" by "free".

13. He had some reservations regarding Mr. Kartashkin's proposed amendment to paragraphs 1 (b) and 2. It was natural in a humanitarian context to focus on the need for food and medicaments. "Vital products" might, however, include items prohibited under the sanctions imposed by the Security Council.

14. Mr. GUISSÉ said that steps should have been taken to prepare a text that was acceptable to all members before the draft resolution was submitted for adoption. He suggested that members with divergent views should produce a joint text for adoption later in the session.

15. Mr. PINHEIRO said that the Sub-Commission, in making its opposition to sanctions felt, was in good company, that of highly regarded non-governmental organizations (NGOs) such as Franciscans International and Dominicans for Justice and Peace, which had presented the

Commission on Human Rights with catastrophic data concerning the situation of children in Iraq, and the Justice and Peace Commission, which had strongly criticized the impact of situations on African countries such as Burundi. He would support any amendment acceptable to Mrs. Daes and the other sponsors that made the wording of the draft resolution more forceful.

16. Ms. HAMPSON expressed support for Mr. Kartashkin's proposed amendment to paragraph 3 but suggested rewording it to read "other products vital to the health of the population". That would cover, for example, essential equipment for ensuring a supply of clean drinking water.

17. Mrs. WARZAZI said she formally proposed the following amendments: deletion of the words "at least the core content of" in the fourth preambular paragraph; replacement of the words "consider recommending" in the introductory phrase of paragraph 1 by "recommend"; replacement of the phrase "that it consider restructuring sanctions regimes" in paragraph 1 (b) by "that, as a first step, it alleviate its sanctions regimes" and of the word "adequate" in the same subparagraph by "free". Lastly, she proposed the following new version of paragraph 3:

> "3. Urges Governments targeted by sanctions to respect their human rights obligations and to facilitate, by all means available to them, the alleviation of the humanitarian crisis in their countries pending the lifting of the sanctions."

18. Mrs. DAES said that she had no difficulty accepting all of Mrs. Warzazi's proposed amendments. She wished it to be placed on record that she had taken great pains to acquaint herself with the recommendations proposed by the Humanitarian Panel of the Security Council to ensure that the language of the draft resolution was in full accordance with the Sub-Commission's mandate and would in no way disturb the Sub-Commission's relationship with its parent bodies. She thanked members for their constructive comments and regretted that there had not been time for fuller consultations. It was to be hoped that the draft resolution would be adopted by consensus.

19. Mr. ALFONSO MARTÍNEZ expressed support for Mrs. Warzazi's proposed amendments and for the comments made by Mrs. Daes.

20. Mr. JOINET proposed that, in the sixth preambular paragraph, the words "in particular for" be replaced with the words "on the one hand in that it worsens the situation of" and that, after the words "indigenous peoples", the following words be inserted: "on the other hand in that it encourages a black market and corruption".

21. Mr. GUISSE, supported by Mrs. WARZAZI and Mr. FAN, said that Mr. Joinet's proposed amendment would unduly encumber the text.

22. Mrs. WARZAZI added that, if there were no objections to her proposed amendments, she would be willing to become a sponsor of the draft resolution.

23. Mr. OGURTSOV, referring to paragraph 1, subparagraph (a), expressed concern that the Sub-Commission should be appealing to the Commission on Human Rights to make a recommendation to the Security Council. He asked whether the proper institutional hierarchy was being respected.

24. Mr. FAN said that he fully supported the amendments proposed by Mrs. Warzazi and other members.

25. Mr. ALFONSO MARTÍNEZ said that he supported the amendments proposed by Mr. Kartashkin and Mrs. Warzazi in respect of paragraph 1, subparagraph (b). However, he could not support Mr. Joinet's proposed amendment since it introduced new issues, which would only complicate matters. Black markets were not confined to countries experiencing embargoes.

26. Mr. SIK YUEN said he agreed with the two previous speakers.

27. Mr. JOINET, supported by Ms. HAMPSON, said that it was a well-known fact that embargoes automatically led to the formation of black markets and provided fertile grounds for mafia activity. All too often, such corruption became institutionalized, and remained even after an embargo had been lifted. He did not mean to suggest that the responsibility for such corruption lay with the States being targeted by sanctions. He was not in favour of embargoes. If, however, his proposed amendment was not accepted, he would not become a sponsor.

28. Mr. PARK, supported by Mr. GUISSÉ, said that Mr. Ogurtsov had raised an important point. He was in favour of deleting the reference to Security Council from paragraph 1, subparagraph (a). He personally had no intention of taking part in any attempts to interfere with the functions of the Council. As for subparagraph (b), it was surely not for the Sub-Commission to direct the Security Council to restructure its sanctions regimes.

29. Ms. HAMPSON said that, in paragraph 1, subparagraph (b), it was essential to refer not just to "vital products", but to "products vital to the health of the population". That would also cover such products as chemicals necessary to the operation of sanitation plants. Although she had no sympathy with sanctions, she would be forced to withdraw as a sponsor if the words "international peace and security obligations" were deleted from paragraph 3.

30. Mr. GUISSÉ explained that he objected to Mr. Joinet's proposed amendment not because he opposed it in principle, but because he was concerned that it would dilute the text and make it less coherent, and less likely to be adopted by consensus.

31. Mr. ALFONSO MARTÍNEZ concurred with Mr. Guissé. He could not agree with Mr. Joinet that the lifting of sanctions automatically led to a continued black market. With regard to paragraph 1, subparagraph (b), the expression proposed by Mr. Kartashkin ("vital products"), would also cover products vital to the health of the population. He did, however, fully support the point made by Ms. Hampson in respect of paragraph 3.

32. Mr. WEISSBRODT said that it was with great regret that he was taking the floor. The Sub-Commission should reconsider its approach to the drafting process, which was always highly problematic in public. It had just spent over an hour discussing the draft resolution.

According to the rules of procedure, however, sponsors should not be proposing sub-amendments at all. He did, however, feel bound to point out that the proposed deletion of the words "at least the core content" would amount to a misquotation of General Comment 8. Since he disagreed with the manner in which the drafting process was being approached and had grave reservations over the amendments proposed by Mr. Park, Mr. Ogurtsov and others, he felt bound to withdraw as a sponsor.

33. Mr. JOINET said that he was sorry not to have been in a position to propose his amendment at an earlier stage, but he had only just received the French version of the text. In connection with Mr. Guissé's comment, he failed to understand why a few additional words would encumber the text. However, Mrs. Warzazi and Mr. Rodriguez-Cuadros had inspired him to qualify the statement he was proposing for insertion in the sixth preambular paragraph. Proposing a sub-amendment to his own amendment, he said that the words "all too often" could be inserted before the words "black market". He was tempted to add the phrase "outside as much as inside the country concerned", but did not want to be accused of encumbering the text still further.

34. Mrs. WARZAZI asked that the meeting be suspended to allow for consultations between the sponsors, especially since Mr. Weissbrodt had withdrawn as a sponsor. She was prepared to make a concession to Ms. Hampson and accept her proposed amendment to paragraph 1, subparagraph (b), on the condition that she would be willing to accept a compromise formula for operative paragraph 3. Her proposal was that, after the word "sanctions", the words "as well as those Governments responsible for the implementation of those sanctions" would be inserted, that the word "their" after the word "respect" would be deleted, and that the word "obligations" would be inserted after the word "rights".

35. The CHAIRPERSON said that, if there were no objections, she would suspend the meeting.

36. Mr. GUISSÉ said that he was not in favour of a suspension.

37. Mr. KARTASHKIN said that all proposed amendments should be disregarded and the original text adopted by consensus.

The meeting was suspended at 4.20 p.m. and resumed at 4.50 p.m.

38. The CHAIRPERSON said that the sponsors of the original text, apart from Mr. Weissbrodt who had confirmed his withdrawal, had accepted most of the proposed amendments. In the fourth preambular paragraph, the words "in which the Committee maintained" would be deleted and replaced by "and considering"; the words "do everything possible" would also be deleted. At the end of the sixth preambular paragraph, the following words would be added "also deplores that embargoes all too often stimulate the black market and corruption". In paragraph 1, the words "consider recommending" would become "recommend", in subparagraph (a), the words "including the Security Council" would be deleted and, in subparagraph (b), the words "and other products vital to the health of the population" would be inserted after the word "supplies". The same words would be added after the word "supplies" in

paragraph 2. In paragraph 3, the words "as well as those Governments responsible for the implementation of those sanctions" would be added after the word "sanctions" and the word "obligations" would be inserted after the word "rights".

39. Mr. JOINET announced that he had become a sponsor of the draft resolution.

40. Mrs. DAES, thanking all the sponsors for their constructive approach, said it had been agreed that, in paragraph 1, subparagraph (b), the words "consider restructuring" would be replaced by the words "as a first step alleviates". Proposing a sub-amendment to the sixth preambular paragraph, she said that the words "also deplores" should be replaced by the word "deploring".

41. The draft resolution, as orally revised and amended, was adopted.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION:

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES;

(b) XENOPHOBIA;

(c) WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

(agenda item 3) (continued) (E/CN.4/Sub.2/2000/L.7, L.8 and L.12-L.14)

Draft decision on the rights of non-citizens (E/CN.4/Sub.2/2000/L.7)

42. Mr. YOKOTA, introducing the draft decision on behalf of its sponsors, said that the purpose of the decision was to appoint Mr. Weissbrodt as Special Rapporteur on the rights of non-citizens, an important topic which required an in-depth study and on which Mr. Weissbrodt had submitted a working paper (E/CN.4/Sub.2/1999/7) to the Sub-Commission at its previous session.

43. Mr. ALFONSO MARTÍNEZ said that he fully supported the appointment of Mr. Weissbrodt as Special Rapporteur with the task of preparing a comprehensive study on the rights of non-citizens, even though he did not share completely the ideas expressed in Mr. Weissbrodt's working paper.

44. Mr. JOINET said he wished to become a sponsor of the draft resolution.

45. The draft resolution was adopted.

Draft decision on the concept and practice of affirmative action (E/CN.4/Sub.2/2000/L.8)

46. Mr. ALFONSO MARTÍNEZ and Mr. JOINET said that they wished to become sponsors of the draft decision.

47. The draft decision was adopted.

Draft resolution on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and migrant workers (E/CN.4/Sub.2/2000/L.12)

48. Mr. JOINET and Mr. BENGOA said they wished to become sponsors of the draft resolution.

49. The draft resolution was adopted.

Draft resolution on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (E/CN.4/Sub.2/2000/L.13)

50. Mr. OLOKA-ONYANGO said he wished to become a sponsor of the draft resolution.

51. Mrs. DAES said that subparagraph (f) of the fourteenth preambular paragraph should be corrected to read "The working paper on proposals for the work of the World Conference relating to discrimination against indigenous peoples submitted by Ms. Erica-Irene Daes on 1 May 2000".

52. Mr. OGURTSOV said that, in paragraph 11 of the Russian version, "7 November 2001" should be corrected to "7 September 2001".

53. Mr. JOINET said that, despite the holding of two very expensive world conferences, the situation with regard to racism, racial discrimination, xenophobia and related intolerance appeared to be getting worse. He suggested that the first item on the agenda of the forthcoming World Conference should be a review of the effectiveness of the previous conferences. He also noted that, while discrimination based on gender was mentioned in paragraph 17 of the draft resolution, there was no mention of discrimination based on sexual orientation. It would be unfortunate if the World Conference ignored discrimination against homosexuals, which was a major aspect of discrimination. Notwithstanding those misgivings, he was prepared to become a sponsor of the draft resolution as it stood.

54. Mr. PINHEIRO pointed out that his working paper containing proposals for the work of the World Conference (A/CONF.189/PC.1/13/Add.1) included a critical review of the previous world conferences.

55. Mrs. WARZAZI pointed out that the "intolerance" in the title of the World Conference referred to intolerance related to racism, racial discrimination and xenophobia, and that the discrimination referred to by Mr. Joinet was not within the remit of the Conference.

56. Mr. FAN said that the World Conference was not intended to deal with all possible forms of discrimination. According to article 2 of the Universal Declaration of Human Rights, everyone was entitled to all the rights and freedoms set forth there without distinction of any kind; it would be very difficult for any single conference to discuss all possible distinctions.

57. Mr. JOINET said that a reference to a specific paragraph of Mr. Pinheiro's working paper, which did indeed include the kind of review he had suggested, might be appropriate. He accepted Mrs. Warzazi's argument that discrimination on the basis of sexual orientation was not covered by the title of the World Conference, although the same argument applied to gender-based discrimination. Perhaps a study was called for to clarify the issue.

58. Mr. FAN said that he was concerned that the inclusion of too many new elements, each of which was undoubtedly important in itself, was drawing attention away from the most important elements.

59. Mr. PARK said that the draft resolution was a very lengthy one and suggested that preambular paragraph 4 could be deleted, as the increase in the number of cases of racism, racial discrimination, xenophobia and related intolerance was covered in the sixth preambular paragraph. He also suggested that, in paragraph 16, the active and effective participation in the World Conference of all "relevant" organs of society should be encouraged, as the phrase "all organs of society from all parts of the world" was rather vague.

60. Mrs. WARZAZI said that the second and third lines of the sixth preambular paragraph should read "... and its effects on the right to development ... and on the increase in the phenomena of ...", not "at the increase". As the Sub-Commission was expressing its concern at the effects of globalization on the increase in racism, racial discrimination, xenophobia and related intolerance, there was no repetition of the fourth preambular paragraph.

61. Mr. YOKOTA suggested the following wording to clarify paragraph 16: "Encourages the active and effective participation in the World Conference of all relevant organs and agencies of the United Nations and other intergovernmental and non-governmental organizations, including those representing ...".

62. Ms. MBONU said that Mr. Yokota's suggested change would exclude civil society, which had a very important role to play; the paragraph should therefore be left as it stood.

63. Mr. WEISSBRODT said that the term "organ of society" was taken directly from the Universal Declaration of Human Rights and he therefore hoped that Mr. Yokota would not insist on changing it. He agreed with Mr. Park that the fourth preambular paragraph could be omitted and with Mr. Joinet that a reference to Mr. Pinheiro's working paper could be included. After the various linguistic corrections and Mrs. Daes' factual correction had been incorporated, he believed the text could be adopted by consensus.

64. The draft resolution, as orally revised, was adopted.

Draft resolution on discrimination based on occupation and descent (E/CN.4/Sub.2/2000/L.14)

65. Ms. HAMPSON said that discrimination based on occupation and descent continued to affect much of the world's population. The subject was one currently being considered by the Committee on the Elimination of Racial Discrimination, and one in which Mr. Goonesekere, who would be entrusted with the task of preparing a working paper on the topic, had wide experience. Mr. Guissé had joined the sponsors of the draft resolution, which she hoped the Sub-Commission would adopt.

66. Mr. PINHEIRO, Mrs. DAES and Mr. EIDE said that they wished to become sponsors of the draft resolution.

67. Mrs. WARZAZI, supported by Mr. GUISSÉ, said that the word occupation in the French version seemed unsuitable and should be replaced, perhaps by métier.

68. Ms. MBONU said that there had been no prior discussion about the text, and she would like to have the words "occupation and descent" clarified.

69. Mr. JOINET said he thought that the word emploi would be the most suitable one in the French text.

70. Mr. GOONESEKERE said that the purpose of the draft resolution was to address a situation in which, as already mentioned, families in many parts of the world were trapped in a rigidly stratified system from which there was little chance of escape. It was not a criticism of Governments; indeed, many Governments were already taking steps to deal with the problem. There were, however, difficulties - as recognized in the activities of the Working Group on Contemporary Forms of Slavery - regarding the implementation of laws and overcoming a general lack of awareness. He felt that the topic warranted the Sub-Commission's attention, and he was ready to undertake the task of preparing a working paper accordingly.

71. Mr. ALFONSO MARTÍNEZ said he agreed with Ms. Mbonu about the lack of prior discussion. Although he had no objection to the preparation of a working paper, he would reserve his final opinion on the matter until the Sub-Commission's next session. With regard to the Spanish version of the draft, the word oficio might be better than profesión.

72. Mr. YIMER, referring to paragraphs 2 and 3, said he wondered what difference was implied between "relevant Governments" and "Governments concerned".

73. Ms. HAMPSON said that, while she would prefer to retain the word "occupation" in the English version, she could accept the word "work".

74. The operative part of draft resolution E/CN.4/Sub.2/2000/L.13, already adopted at the current meeting, invited the World Conference to consider, inter alia, problems of discrimination based on descent and the implications of multiple identities - which meant that the Sub-Commission had indeed thought about such issues and considered them suitable for consideration by the Conference. The purpose of the working paper proposed in the current draft

resolution would be to facilitate further discussion at the Sub-Commission's next session. She would have no difficulty in replacing the word "concerned" by "relevant", since it would be up to Governments themselves to determine whether or not the matter warranted their attention.

75. Mr. GUISSÉ said that, in the French text, the word métier would be preferable to emploi, since a feature of the situation in question was the confinement to a father-to-son trade as the sole means of earning a living.

76. Mr. EIDE said that the subject had indeed been considered, in the deliberations of the Working Group on Minorities and other forums. The draft resolution should be adopted, the semantic and other details left to the Rapporteur and the secretariat, and the resultant working paper discussed at the Sub-Commission's next session.

77. Mrs. DAES said that, to enable the draft to be adopted by consensus, the term "concerned" should be used in paragraphs 2 and 3 and, if necessary, the word "work" could replace "occupation", although she would prefer the latter.

78. Mr. ALFONSO MARTÍNEZ, referring to paragraphs 2 and 3, proposed that the adjectives should be omitted, the text thus referring simply to "Governments". He would prefer to omit operative paragraphs 2 and 3 altogether but would not insist on that, although he strongly urged deletion of the adjectives.

79. Mr. JOINET said that he, too, was in favour of deleting paragraphs 2 and 3.

80. Mr. RODRÍGUEZ-CUADROS proposed that the Sub-Commission should decide on the draft without further debate since, if it was adopted, the Sub-Commission would have ample opportunity, at its next session, for a discussion of the subject on the basis of the working paper.

81. Ms. HAMPSON said that the sponsors could agree to the deletion of the words "relevant" and "concerned" but not to the deletion of paragraphs 2 and 3. With a view to achieving a consensus, the word "occupation" could be replaced by "work" in order to facilitate the use of the word emploi in the French text.

82. Ms. MBONU said that, had the matter been put to a vote, she would have voted against the draft resolution; she would not, however, oppose its adoption by consensus.

83. The CHAIRPERSON said that, on that understanding, she took it that the Sub-Commission wished to adopt the draft resolution.

84. The draft resolution, as orally amended, was adopted.

The meeting rose at 6.10 p.m.